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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 25, and 52**

**[FAC 2005-63; FAR Case 2012-030; Docket 2012-0030, Sequence 1]**

**RIN 9000-AM44**

**Federal Acquisition Regulation; Iran Threat Reduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to require certifications that implement the expansion of sanctions relating to the energy sector of Iran and sanctions with respect to Iran's Revolutionary Guard Corps, as contained in Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012.

**DATES:** Effective Date: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before **[insert date 60 days after FEDERAL REGISTER publication date]** to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-63, FAR Case 2012-030, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching "FAR Case 2012-030" select the link "Submit a Comment" that corresponds with "FAR Case 2012-030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-030" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration,  
Regulatory Secretariat (MVCB), ATTN: Hada  
Flowers, 1275 First Street, N.E., 7<sup>th</sup> Floor,  
Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005-63, FAR Case 2012-030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-63, FAR Case 2012-030.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR), to implement sections of Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158), enacted August 10, 2012.

Sections 201 and 202 expand sanctions in the Iran Sanctions Act of 1996 (Pub. L. 104-72, 50 U.S.C. 1701 note) with respect to the energy sector of Iran and impose sanctions with respect to transport of crude oil from Iran and evasion of sanctions by shipping companies. Section 203 expands sanctions with respect to development by Iran of weapons of mass destruction.

Section 302 imposes sanctions with respect to persons that support or conduct certain transactions with Iran's Revolutionary Guard Corps or other sanctioned persons.

Section 311 expands the procurement prohibitions of the Iran Sanctions Act as follows:

- Section 311 amends section 6(b)(1) of the Iran Sanctions Act to require, in addition to the certification relating to activities described in section 5 of the Iran Sanctions Act, a certification from each prospective contractor that it, and any person owned and controlled by the prospective contractor, does not knowingly engage in a significant transaction or transactions with Iran's

Revolutionary Guard Corps or any of its officials, agents or affiliates.

- In addition, section 311 amends the remedies and waiver provisions at section 6(b)(2) and (5), which are applicable to both certifications now required by section 6(b)(1).

The exception for eligible products from designated countries under the Trade Agreements Act is specified at section 302(f), which makes section 5(f) of the Iran Sanctions Act applicable to the new sanctions relating to transactions with Iran's Revolutionary Guard Corps, and section 6(b)(3) of the Iran Sanctions Act, which relates to the certification requirement.

## **II. Discussion and Analysis**

This interim rule amends the FAR to address the new sanctions and certification requirement as follows:

- Certification relating to activities described in section 5 of the Iran Sanctions Act (FAR 25.703-2(a)(1)) - Replaces the list summarizing the activities subject to sanctions with a more top-level description of the types of activities subject to sanctions, because numerous activities that may be subject to sanctions have been added to section 5 of the Iran Sanctions Act by sections 201-203 of this new Act.

- Certification relating to transactions with Iran's Revolutionary Guard Corps (FAR 25.703-2(a)(2)) - Adds a new certification requirement to implement section 311(a) of this new Act. Specifies that a significant transaction, for purposes of this rule, is any transaction that exceeds \$3,000, and uses the \$3,000 threshold throughout the rule.

- Remedies (FAR 25.703-2(b)) - Amends paragraph (b)(3) to require debarment period to be at least 2 years to implement section 311(b)(1)(B)(i)(II) of this new Act.

- Exceptions (25.703-2(c) and 25.703-3(c)) - Simplifies and clarifies the exception for acquisitions subject to trade agreements.

- Waiver (FAR 25.703-4) - Amends the waiver requirement to implement changes required by section 311(b)(1)(C) of this new Act. Waivers of the 25.703-2 certification requirements must be "essential to the national security interest of the United States."

- Solicitation provisions (FAR 52.212-3(o) and 52.225-25) - Adds the new certification requirement to implement section 311(a) of this new Act to add the condition that, by submission of its offer, the offeror certifies that it, and any person owned or controlled by it, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates.

- Annual Representations and Certifications (FAR 4.1202 and FAR 52.204-8) - Makes conforming changes to revise references to title and date of FAR 52.225-25.

### **III. Determinations**

The Federal Acquisition Regulatory (FAR) Council has made the following determinations with respect to the rule's application of titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) to contracts in amounts not greater than the simplified acquisition threshold (SAT), contracts for the acquisition of commercial items, and contracts for the acquisition of commercially available off-the-shelf (COTS) items.

#### **A. Applicability to Contracts at or Below the Simplified Acquisition Threshold**

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to them. If a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. Therefore, given that the requirements of titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 were enacted to widen the sanctions against Iran, the FAR Council

has determined that it is in the best interest of the Federal Government to apply this rule to all acquisitions including contracts at or below the SAT, as defined at FAR 2.101. An exception for acquisitions at or below the SAT would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

**B. Applicability to Contracts for the Acquisition of Commercial Items**

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. If a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Therefore, given that the requirements of titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101.

An exception for contracts for the acquisition of commercial items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

**C. Applicability to Contracts for the Acquisition of Commercially Available Off-the-Shelf Items**

41 U.S.C. 1907 governs the applicability of laws to contracts for the acquisition of COTS items, and is intended to limit the applicability of laws to them. If a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt contracts for the acquisition of COTS items, the provision of law will apply. Therefore, given that the requirements of titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 were enacted to widen the sanctions against Iran, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of COTS items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby



undermining the overarching public policy purpose of the law.

#### **IV. Executive Order 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule will only have significant impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5

of the Iran Sanctions Act or certain transactions with Iran's Revolutionary Guard Corps. Domestic entities generally do not engage in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (see, e.g., Department of Treasury Office of Foreign Assets Control regulations at 31 CFR part 560). Accordingly, it is expected that the number of domestic entities significantly impacted by this rule will be minimal, if any. The Regulatory Flexibility Act is for the protection of United States small entities, not foreign entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAC 2005-63, FAR Case 2012-030), in correspondence.

## **VI. Paperwork Reduction Act**

The interim rule does not contain any information collection requirements that require the approval of the

Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **VII. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158), which was signed on August 10, 2012. The certification requirement of section 311 becomes effective 120 days after enactment (December 8, 2012). Implementation of these economic sanctions through a certification requirement is part of a comprehensive policy directed towards the goal of compelling Iran to abandon efforts to acquire a nuclear weapons capability and other threatening activities. This is consistent with the objective of the President and Congress to prevent Iran from getting a nuclear weapon. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 4, 25 and 52.**

Government procurement.

Dated: December 3, 2012

LAURA AULETTA,  
Director,  
Office of Governmentwide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 25, and 52 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113).

#### **PART 4—ADMINISTRATIVE MATTERS**

2. Amend section 4.1202 by revising paragraph (y) to read as follows:

##### **4.1202 Solicitation provision and contract clause.**

\* \* \* \* \*

(y) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

\* \* \* \* \*

#### **PART 25—FOREIGN ACQUISITION**

3. Amend section 25.700 by revising paragraphs (c) and (d) to read as follows:

##### **25.700 Scope of subpart.**

\* \* \* \* \*

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104-172; 50 U.S.C. 1701 note), including amendments by the Iran Freedom Support Act (Pub. L. 109-293), section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), and Titles II and

III of the Iran Threat Reduction Act and Syria Human Rights Act of 2012 (Pub. L. 112-158); and

(d) Prohibition against contracting with entities that export sensitive technologies to Iran (22 U.S.C. 8515).

4. Amend section 25.703 by revising the section heading to read as follows:

**25.703 Prohibition on contracting with entities that engage in certain activities or transactions relating to Iran.**

\* \* \* \* \*

5. Revise section 25.703-2 to read as follows:

**25.703-2 Iran Sanctions Act.**

(a) Certification. (1) Certification relating to activities described in section 5 of the Iran Sanctions Act. As required by section 6(b)(1)(A) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. Such activities, which are described in detail in section 5 of the Iran Sanctions Act, relate to the energy sector of Iran and development by Iran of weapons of mass destruction or other military capabilities.

(2) Certification relating to transactions with Iran's Revolutionary Guard Corps. As required by section 6(b)(1)(B) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with 25.703-4, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any significant transaction (i.e., a transaction that exceeds \$3,000) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(b) Remedies. Upon the determination of a false certification under paragraph (a) of this subsection, the agency shall take one or more of the following actions:

(1) The contracting officer terminates the contract in accordance with procedures in part 49, or for commercial items, see 12.403.

(2) The suspending official suspends the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official debars the contractor for a period of at least two years in accordance with the procedures in subpart 9.4.

(c) Exception for trade agreements. The certification requirements of paragraph (a) of this subsection do not apply if the acquisition is subject to trade agreements and the offeror certifies that all the offered products are designated country end products or designated country construction material (see subpart 25.4).

6. Amend section 25.703-3 by revising the section heading, and paragraphs (a) and (c) to read as follows:

**25.703-3 Prohibition on contracting with entities that export sensitive technology to Iran.**

(a) The head of an executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System via <https://www.acquisition.gov> (22 U.S.C. 8515).

\* \* \* \* \*

(c) Exception for trade agreements. The representation requirement of paragraph (b) of this subsection does not apply if the acquisition is subject to trade agreements and the offeror certifies that all the offered products are



designated country end products or designated country construction material (see subpart 25.4).

7. Revise section 25.703-4 to read as follows:

**25.703-4 Waiver.**

(a) An agency or contractor seeking a waiver of the requirements of 25.703-2 or 25.703-3, consistent with section 6(b)(5) of the Iran Sanctions Act or 22 U.S.C. 8551(b), respectively, and the Presidential Memorandum of September 23, 2010 (75 FR 67025), shall submit the request to the Office of Federal Procurement Policy, allowing sufficient time for review and approval.

(b) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled, if warranted.

(1) A class waiver may be requested only when the class of supplies or equipment is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(c) In general, all waiver requests should include the following information:

(1) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(2) Offeror's name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(3) Description/nature of product or service.

(4) The total cost and length of the contract.

(5) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror.

(i) If the offeror exports sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran, provide rationale why it is in the national interest for the President to waive the prohibition on contracting with this offeror, as required by 22 U.S.C. 8551(b).

(ii) If the offeror conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act or engages in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act, provide rationale why it is essential to the national security interests of the United States for the President to waive the prohibition on contracting with this offeror, as required by section 6(b)(5) of the Iran Sanctions Act.

(6) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System and the Federal Awardee Performance Information and Integrity System at [www.ppirs.gov](http://www.ppirs.gov), and any other relevant information).

(7) Information regarding the offeror's relationship or connection with other firms that—

(i) Export sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; or

(iii) Conduct any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act.

(8) Describe— (i) The sensitive technology and the entity or individual to which it was exported (i.e., the government of Iran or an entity or individual owned or controlled by, or acting on behalf or at the direction of, the government of Iran);

(ii) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act; or

(iii) The transactions that exceed \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act.

8. Amend section 25.1103 by revising paragraph (e) to read as follows:

**25.1103 Other provisions and clauses.**

\* \* \* \* \*

(e) The contracting officer shall include in all solicitations the provision at 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications.

**PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

9. Amend section 52.204-8 by revising the date of the provision and paragraph (c) (1) (xx) to read as follows:

**52.204-8 Annual Representations and Certifications.**

\* \* \* \* \*

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (DEC 2012)

\* \* \* \* \*

(c) (1) \* \* \*

(xx) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications. This provision applies to all solicitations.

\* \* \* \* \*

10. Amend section 52.212-3 by revising the date of the provision and paragraph (o) to read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (DEC 2012)

\* \* \* \* \*

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran. (1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) Representation and certifications. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly

engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

\* \* \* \* \*

11. Amend section 52.225-25 by—

a. Revising the section heading and date of the provision; and

b. Revising paragraph (c) and the introductory text of paragraph (d) to read as follows:

**52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.**

\* \* \* \* \*

PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN  
ACTIVITIES OR TRANSACTIONS RELATING TO IRAN—REPRESENTATION AND  
CERTIFICATIONS (DEC 2012)

\* \* \* \* \*

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703-4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

\* \* \* \* \*

[BILLING CODE 6820-EP]

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